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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,619

08/25/2003

Dennis A. Boismier

1001.1689101

2861

28075 7590 01/23/2007
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EXAMINER

WYSZOMIERSKI, GEORGE P

ART UNIT

PAPER NUMBER

1742

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/647,619

Applicant(s)

BOISMIER ET AL.

Examiner

George P. Wyszomierski

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/13/06 (RCE).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11-13-06</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The Request for Continued Examination (RCE) filed November 13, 2006 has been processed. The Amendment, remarks, and Information Disclosure Statement (IDS) filed on that date have been considered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 23, 24, 26, 28, 30, 32, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Heath (U.S. Patent 5,725,570).

Column 8 of Heath discloses a stent including wire loop portions made of a Ni-Ti alloy that initially has linear elastic properties but includes a flexible portion which has been heated to obtain superelastic properties. Thus, all aspects of the claimed invention are held to be fully disclosed by Heath.

4. Claims 23, 27, 28, 30, 32 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Muni et al. (U.S. Patent 6,375,629).

Column 7 of Muni discloses a core wire made of a Ni-Ti alloy that initially has linear elastic properties but includes a flexible portion which has been heated to obtain superelastic properties. Thus, all aspects of the claimed invention are held to be fully disclosed by Muni et al.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25, 29, 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heath or Muni et al.

The Heath and Muni patents, discussed supra, do not specifically refer to the filter legs of claims 25 and 34, do not specify "only one" superelastic region as recited in claim 29, or the specific temperature range of instant claim 31. However,

a) With regard to filter legs, it is unclear precisely what structure would be required to conform to the claim language, i.e. what part of a filter would be considered a filter leg. Further, at least Muni column 3, line 19 indicates that the prior art materials are suitable for use in filters, and the interwoven material depicted in the drawings of Heath would appear to be suitable as a filter or filter leg material.

b) The formation of any desired number of superelastic regions in the prior art materials would have been well within the level of one of skill in the art, by applying heat to the desired region(s).

c) The temperature ranges as claimed overlap those disclosed in Heath column 8 or Muni column 7.

Thus, a prima facie case of obviousness is established between the disclosures of Heath or Muni et al. and the presently claimed invention.


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7. Applicant's detailed discussion of the difference between linear elastic and superelastic material in the remarks filed November 13, 2006 has been considered. In view of that discussion, the previous rejections based on various prior art documents have been withdrawn in favor of rejections based on prior art that is clearly more relevant to the invention as presently claimed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (571)-273-8300. This Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GEORGE WYSZOMIERSKI
PRIMARY EXAMINER
GROUP 1700

GPW
January 16, 2007